

D.P.U. 95-77

Petition of Boston Edison Company pursuant to G.L. c. 164, § 94B, for approval by the Department of Public Utilities of a contract between Boston Edison Company and its subsidiary, Boston Energy Technology Group, Inc.

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Petitioner

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## I. INTRODUCTION

On June 6, 1995, pursuant to G.L. c. 164, § 94B and Boston Edison Company, D.P.U. 93-37 (1993), Boston Edison Company ("BECo" or "Company") filed with the Department of Public Utilities ("Department"), a request for approval of an Emergency Services Agreement ("Agreement") between the Company and Boston Energy Technology Group, Inc. ("BETG"), a wholly-owned subsidiary, for the provision of services by BETG to BECo in the event of a major emergency.

Pursuant to notice duly issued, on August 15, 1995, a hearing on this matter was conducted at the offices of the Department in Boston. The Attorney General of the Commonwealth ("Attorney General") intervened as of right pursuant to G.L. c. 12, § 11E. In support of its petition, the Company sponsored the testimony of two witnesses: Theresa M. Gaffney, system emergency planning manager for BECo and Richard A. Zimbone, a senior vice-president for BETG. The evidentiary record includes two exhibits submitted by the Company, six exhibits submitted by the Department, and one response to a record request issued by the Department. The Company and the Attorney General filed briefs and reply briefs.

## II. BACKGROUND

On June 18, 1993, the Department issued an order approving, inter alia, a partial settlement in BECo's petition for approval to (1) invest up to \$45 million in BETG, (2) enter into a related Management Services Agreement and Tax Sharing Agreement between the Company and BETG, and (3) issue advances to BETG pursuant to the Tax Sharing Agreement. D.P.U. 93-37. The Department approved settlements in that case, and subsequently issued an order approving the Tax Sharing Agreement between the Company and BETG. Boston Edison Company, D.P.U. 93-37 (1994); Boston Edison Company, D.P.U. 93-37-A.

The partial settlement provides, inter alia, that in order to facilitate future Department review of cost allocation issues between BECo and BETG, BECo would record the provision of any goods or services by BETG to the Company, and the costs and market value of said goods and services. D.P.U. 93-37, at 10. In addition, pursuant to Article 5 of the partial settlement, the Company is required to seek Department approval of purchases from BETG in excess of \$100,000, or purchases of goods and services from BETG which constitute utility operations. Id. at 10-11. In accordance with G.L. c. 164, §94B and the requirement that BECo seek Department approval of purchases of goods and services from BETG which constitute utility operations, the Company submitted the instant petition.

### III. THE COMPANY'S PROPOSAL

Pursuant to the proposed Agreement, BECo would obtain certain managerial, technical and support services from BETG for "assistance in emergency maintenance and restoration of utility service and in mobilization of personnel and equipment" (Agreement, Exh. A). Personnel could be hired during an emergency that required the provision of services "beyond the normal operations of BECo, for example a natural disaster, which requires the declaration of a major emergency plan of operation ("MEPO") or an extensive system outage requiring high levels of manpower and operations, or a work stoppage" (Agreement at 1). BECo estimates the hourly cost per management employee under the Agreement to be \$100.00 (Exh. DPU-4), including a 50 percent adder for overhead costs (RR-DPU-1). The Company currently anticipates that three BETG employees, formerly employed by BECo, would be engaged in providing emergency services under the proposed Agreement (Exh. DPU-1).

#### IV. STANDARD OF REVIEW

BECo filed its petition for approval of the Agreement pursuant to G.L. c. 164

§ 94B, which provides in pertinent part:

No gas or electric company shall, without the approval of the [D]epartment, hereafter enter into a contract with a company related to it as an affiliated company, as defined in section eighty-five, covering a period in excess of one year, by virtue of which any compensation is to be paid by the said gas or electric company in whole or in part for services rendered by said affiliated company ....

The statute does not set forth an explicit standard of review and, therefore, Department case precedent provides the basis for reviewing Section 94B proposals. In evaluating Section 94B proposals, the Department requires utilities to demonstrate that (1) the proposal provides a reasonable method of allocating liabilities and benefits between a utility company and its affiliate, and (2) the methods employed in structuring the proposal are sufficient to protect the interests of a utility company's ratepayers. Harbor Electric & Boston Edison Company, D.P.U. 90-288-A (1991); Harbor Electric & Boston Edison Company, D.P.U. 90-288 (1991).

In reviewing a services agreement under this standard, the Department, at a minimum, examines whether the accounting methods provided in the agreement adequately ensure that the utility's ratepayers are not subsidizing the subsidiary's operations, and that the provisions of the agreement are sufficient to minimize a utility's liabilities and ratepayer

exposure with respect to the subsidiary's operations. Boston Edison Company, D.P.U. 93-37 (1993).

#### IV. POSITION OF THE PARTIES

##### A. Attorney General

The Attorney General's concern with the Agreement goes to the absence of any language limiting the number of BETG employees available pursuant to the contract (Attorney General Brief at 1-2). The Attorney General recommends that the Department approve the Agreement only if it contains a provision that BECo can employ only the three BETG employees designated in Exhibit DPU-1 (id. at 2). According to the Attorney General, such a clause would eliminate any ambiguity surrounding the number of BETG employees BECo could employ under the contract, and would be consistent with the language and intent of those sections of Chapter 164 applying to affiliate transactions (Attorney General Reply Brief at 2).

##### B. Company

The Company asserts that the proposed Agreement would benefit BECo ratepayers during emergencies by (1) providing additional support from experienced BETG personnel, (2) improving the Company's response and recovery times, and (3) providing backup to its own employees (Tr. at 16-17, 24). Further, BECo maintains that each of the three named BETG employees has experience with the Company's emergency response activities and would be called upon only when needed (id. at 37-38). The Company maintains that it should be permitted to call upon any BETG employee to the extent that the employee has skills the Company requires during a major emergency (Company Brief at 1). The Company argues that there is no factual or logical

basis for imposing a restriction on the Company's flexibility in responding to such an emergency by specifically limiting the employees who could provide services to the three named in the contract (id.).

With respect to the structure of the proposed Agreement, other than the fact that it would allow BETG to provide services to BECo, rather than the reverse, the Company suggests that the terms and format are nearly identical to those in the Management Services Agreement contained in the settlement approved in D.P.U. 93-37 (Exh. DPU-2).

V. ANALYSIS AND FINDINGS

Pursuant to the settlement approved in D.P.U. 93-37, in the absence of prior written approval by the Department under its statutory or regulatory provisions, the Company cannot make any purchases from BETG in excess of \$100,000, or purchases of goods and services from BETG that are now utility operations. BECo has requested approval from the Department to purchase services, in the form of hiring BETG employees during major emergency situations, pursuant to the proposed Agreement. The Department recognizes that response to major emergency situations constitutes a utility operation, but also recognizes that utility companies customarily request assistance from each other and from outside contractors to assist in power restoration activities during such emergencies. See, for example, Western Massachusetts Electric Company, D.P.U. 95-86 (1995).

The proposed Agreement calls for BECo to hire BETG personnel on an as-needed basis. BECo would pay an estimated rate of \$100.00 per hour for each BETG employee retained under the Agreement. Through implementation of the proposed Agreement, BECo would obtain the

services of people experienced in emergency response activities without the expense of maintaining these people on BECo's payroll on a year-round basis. Expenses under the proposed Agreement would vary each year depending on the number and intensity of storms. The Attorney General has presented no compelling reason for the Department to qualify its approval of the proposed Agreement by limiting the number of BETG employees available to the Company. The Department finds that ratepayers would be better served if the Company has flexibility to hire the number of BETG personnel needed in a particular emergency circumstance.

Since hiring under the Agreement would be classified for accounting purposes as operation and maintenance expense, BECo's rates would not be affected by the temporary hiring of personnel under this Agreement. If costs incurred under this Agreement were included with others incurred during an emergency, and the total qualified as an extraordinary expense occurring during a test year, the Department would examine these costs along with all other expenses, and determine the appropriate ratemaking treatment in the forum of a general rate proceeding. Therefore, the Department finds that the proposed Agreement provides a reasonable method of allocating liabilities and benefits between BECo and BETG, and that the methods employed in structuring the proposal are sufficient to protect the interests of BECo's ratepayers.

VI. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the Emergency Services Agreement between Boston Edison Company and its wholly-owned subsidiary, Boston Energy Technology Group, Inc., be and hereby is approved.

By Order of the Department,

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Mary Clark Webster, Commissioner

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Janet Gail Besser, Commissioner